

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 11-241—sHB 6497

Banks Committee

Appropriations Committee

**AN ACT CREATING JOBS BY ENHANCING CONNECTICUT'S
CORPORATE AND SECURITIES LAWS**

SUMMARY: This act creates a mechanism for specified business entities to change their entity type through mergers, conversions, and interest exchanges. It also allows domestications, through which a business entity becomes an entity of the same type in Connecticut or another jurisdiction. Subject to various conditions, the act allows these transactions to involve both domestic and foreign entities. The act is based on the Model Entity Transactions Act (see BACKGROUND).

The act does not affect existing law for transactions involving the same entity types (for example, a share exchange between two corporations or the merger of two partnerships). However, it generally replaces prior law's provisions for changing from one entity type to another (for example, provisions allowing a partnership to merge with a limited liability company (LLC)).

Prior law authorized some, but not all, of the transactions covered by the act. In most cases, the act's mechanism replaces prior law. But the act does not repeal a provision in existing law regarding domestic corporations' power to acquire interests in other entities. It permits certain transactions not covered by prior law, but bars certain mergers prior law permitted. The act standardizes procedures for transactions involving different entity types.

To enter into one of these transactions, specified parties must approve a transaction plan. The act sets the plan's contents as well as which entities must approve it and how they must do so. The approval method is largely tied to existing law for approval of such transactions. The act also provides how parties may amend or abandon a plan.

For the transaction to take effect, the act requires specified parties to the transaction to file documents with the secretary of the state and outlines their procedures and contents. The act also outlines the various consequences of the transactions, including how the parties succeed to the rights and liabilities of the entities involved in the transaction.

The act's procedural requirements are generally similar to those for transactions already permitted by law (for example, mergers or share exchanges of business corporations). In many cases the act's requirements are more detailed than those under existing law.

EFFECTIVE DATE: January 1, 2014

**§ 9 — ENTITIES COVERED BY THE MODEL ENTITY TRANSACTIONS
ACT**

OLR PUBLIC ACT SUMMARY

The act permits transactions involving both domestic and foreign entities, subject to limitations for particular transactions. It generally defines a domestic entity as one whose internal affairs are governed by Connecticut law.

The act generally applies to transactions involving the following entities:

1. business corporations;
2. professional service corporations;
3. general partnerships, including limited liability partnerships (LLPs);
4. limited partnerships, including limited liability limited partnerships; and
5. LLCs.

The act prohibits various other types of entities with a separate legal identity from participating in the transactions the new mechanism governs, and specifies that it must not be used to effect a transaction involving any of these prohibited entities. These prohibited entities include:

1. business corporations formed under special act;
2. cooperative associations formed under chapter 595;
3. cooperative marketing corporations formed under chapter 596;
4. electric cooperative corporations formed under chapter 597;
5. worker cooperative corporations formed under chapter 599a;
6. insurance companies, health care centers, and other corporations formed under chapters 697 and 698;
7. health care centers, related service groups, hospital service corporations, medical service corporations, and other corporations formed under chapter 698a;
8. prepaid legal service corporations formed under chapter 698b;
9. risk retention groups formed and organized under chapter 698;
10. fraternal benefit societies formed under chapter 700d;
11. banks, related organizations, and other corporations formed under chapters 664, 664b, and 666;
12. credit unions formed under chapter 667;
13. public service companies formed under chapter 277;
14. title insurance companies formed under chapter 700a;
15. out-of-state banks formed under chapter 666;
16. nondepository institutions formed under chapter 668;
17. nonprofit or not-for-profit corporations;
18. religious corporations and societies formed under chapter 598;
19. nonstock corporations formed under chapter 602;
20. unincorporated nonprofit associations;
21. cooperatives;
22. business trusts or statutory trust entities; and
23. any person, other than permitted entities, with a separate legal existence or the power to acquire an interest in real property in its own name other than (a) an individual; (b) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust entity, or similar trust; (c) an association or relationship that is not a partnership solely by reason of the law of any other jurisdiction; (d) a decedent's estate; or (e) a government, a governmental subdivision, agency, or instrumentality or

quasi-governmental instrumentality.

The act does not apply to conversions, mergers, consolidations, interest exchanges, divisions, or other transactions governed by the act between or among entities of the same type. Existing law, unchanged by the act, permits mergers or other consolidations involving certain entities that are not covered by the act—for example, chapter 664c allows mergers involving banks and specified other financial entities.

PERMITTED TRANSACTIONS

§ 10 — Merger

The act defines a merger as a transaction in which two or more merging entities are combined into a surviving entity pursuant to a filing with the secretary of the state. A merging entity is a party that exists immediately before the merger takes effect. A surviving entity is one that continues in existence after a merger or that is created by a merger.

Subject to the exceptions outlined below, the act provides a mechanism for the merger of (1) one or more domestic entities with one or more domestic or foreign entities into a domestic or foreign surviving entity and (2) two or more foreign entities into a domestic entity. The act specifies that, as long as the merger is authorized by the law where a foreign entity is organized, that entity may be a party to, or the surviving entity of, the merger.

The act does not apply to mergers (1) involving entity types not covered by the act or (2) governed by existing law between:

1. two or more domestic corporations, or one or more domestic corporations and one or more foreign corporations;
2. two or more domestic limited partnerships, or one or more domestic limited partnerships and one or more foreign limited partnerships;
3. two or more partnerships or LLPs; or
4. two or more domestic LLCs, or one or more domestic LLCs and one or more foreign LLCs.

The existing law regarding such mergers is similar to the act's provisions.

§ 16 — Interest Exchange

The act creates a mechanism for interest exchanges between (1) a domestic entity and (2) another domestic entity or a foreign entity (but not between two foreign entities). Through such an interest exchange, one entity (the acquiring entity) acquires all of one or more of the other entity's (acquired entity) classes or series of interests, in exchange for interests, securities, obligations, rights to acquire interests or securities, cash, other property, or any combination of these.

A foreign entity that complies with the act's requirements may be a party to an interest exchange, as long as the exchange is authorized by the law where it is organized.

The act defines an interest, unless the context otherwise requires, as a (1) governance or transferable interest in an unincorporated entity or (2) share or membership in a corporation.

By law, (1) a domestic corporation can acquire shares in another corporation or interests in another type of entity and (2) a foreign corporation can acquire the shares of a domestic corporation using a similar mechanism.

§ 22 — *Conversion*

The act creates a mechanism for a domestic entity to convert into (1) a domestic entity of a different type or (2) a foreign entity of a different type, as long as the conversion is authorized by the law of the foreign jurisdiction.

A foreign entity that complies with the act's requirements may convert into a domestic entity of a different type, as long as the conversion is authorized by the law where the entity is organized or the entity's organic rules.

The converting entity that continues in existence after a conversion is called the converted entity.

§ 28 — *Domestication*

The act also creates a mechanism for a domestic entity to become a domestic entity of the same type in a foreign jurisdiction, as long as the domestication is authorized by the law of the foreign jurisdiction. A foreign entity that complies with the act's requirements may become a domestic entity of the same type in Connecticut if the domestication is authorized by the law of its jurisdiction of organization.

For the act's provisions on domestications, a domestic entity means, with respect to a foreign jurisdiction, an entity whose internal affairs are governed by the law of that jurisdiction.

Under the act, the domesticating entity as it continues in existence after a domestication is called the domesticated entity.

§§ 11, 17, 23, 29 — PLAN REQUIREMENT AND CONTENTS

The act requires specified domestic entities seeking to enter a permitted transaction to approve a plan of merger, interest exchange, conversion, or domestication. The required approving parties are: for mergers, a party to the merger; for interest exchanges, the acquired entity; for conversions, a converting entity; and for domestications, a party becoming a foreign entity. For all four transaction categories, the plan must be in a record. Under the act, a record is information that is (1) inscribed on a tangible medium or (2) stored in an electronic or other medium and retrievable in perceivable form.

The act requires the following information in a plan, but the plan may contain other provisions that are not prohibited by law.

Identifying Information

Under the act, plans must contain:

1. for a merger: each merging entity's name, jurisdiction of organization, and type; and if the surviving entity is created in the merger, a statement to that effect and the entity's name, jurisdiction of organization, and type;
2. for an interest exchange: the acquired entity's name and type and the

- acquiring entity's name, jurisdiction of organization, and type;
- 3. for a conversion: the converting entity's name and type and the converted entity's name, jurisdiction of organization, and type; and
- 4. for a domestication: the domesticating entity's name and type and the domesticated entity's name and jurisdiction of organization.

Public Organic Documents and Private Organic Rules

Under the act, a public organic document is a public record whose filing creates an entity, as well as any amendment to or restatement of that record. Private organic rules are the rules, whether or not in a record, that govern an entity's internal affairs, are binding on its interest holders, and are not part of its public organic document, if any.

Plans must contain:

- 1. for a merger: if the surviving entity exists before the merger, any proposed amendments to that entity's public organic document or private organic rules that are, or are proposed to be, in a record; if the survivor is to be created in the merger, that entity's proposed public organic document, if any, and the full text of its private organic rules that are proposed to be in a record;
- 2. for an interest exchange: any proposed amendments to the public organic document or private organic rules that are, or are proposed to be, in a record of the acquired entity;
- 3. for a conversion: the converted entity's proposed public organic document, if it will be a filing entity (meaning an entity that is created by filing a public organic document); and the full text of the converted entity's private organic rules that are proposed to be in a record; and
- 4. for a domestication: the domesticated entity's proposed public organic document if it is a filing entity, and the full text of its private organic rules that are proposed to be in a record.

For each type of transaction, the plan must also contain any other provisions required by the organic rules of a merging, acquired, converting, or domesticating entity, as applicable.

Other Required Laws

Under the act, plans must contain:

- 1. for a merger: any other provisions required by the law of a merging entity's jurisdiction of organization and
- 2. for other transaction categories: any other provisions required by Connecticut law.

Manner of Conversion and Other Terms

For each type of transaction, plans must also contain:

- 1. the manner of converting the interests in each merging party, acquired entity, converting entity, or domesticating entity into interests, securities, obligations, rights to acquire interests or securities, cash, other property, or any combination of these and

2. the transaction's other terms and conditions.

§§ 12, 18, 24, 30 — PLAN APPROVAL

Definitions

Under the act, “approve” means an entity’s governors and interest holders taking whatever steps are necessary under its organic rules, organic law, and other law to (1) propose a transaction subject to the act, (2) adopt and approve the transaction’s terms and conditions, and (3) conduct any required proceedings or otherwise obtain any required votes or consents of the governors or interest holders.

A governor is a person by or under whose authority an entity’s powers are exercised and under whose direction the entity’s business and affairs are managed pursuant to its organic law and rules. An interest holder is a direct holder of an interest. An entity’s organic rules are its public organic document and private organic rules. An entity’s organic law refers to statutes (other than the act), if any, governing the entity’s internal affairs.

Under the act, interest holder liability is:

1. personal liability for an entity’s liability that is imposed on a person (a) solely because of the person’s status as an interest holder or (b) by the entity’s organic rules authorized by the organic law making one or more specified interest holders or categories of them liable in their capacity as interest holders for all or specified liabilities; or
2. an interest holder’s obligation under an entity’s organic rules to contribute to the entity.

Approval Process

The act provides that plans are not effective until approved, as specified below.

Under the act, approval must be in a record by each interest holder of a domestic merging, acquired, converting, or domesticating entity, as applicable, that has interest holder liability for liabilities that arise after the transaction takes effect. This requirement does not apply to an entity that is not a business corporation or, except for interest exchanges, not a nonprofit corporation if (1) the entity’s organic rules provide in a record for the approval of an applicable transaction or a merger in which some or all of the entity’s interest holders become subject to interest holder liability by the vote or consent of fewer than all interest holders and (2) the interest holder voted for or consented in a record to that provision of the organic rules or became an interest holder after the provision was adopted.

The following additional requirements apply to specific transactions.

Merger

Under the act, for a domestic merging entity that is not a business corporation, the plan of merger must be approved in accordance with the requirements, if any, in its organic law and organic rules for merger approval. For example, the act

requires a Connecticut LLC merging with a different entity type to approve the transaction as provided by Connecticut law for LLC mergers (CGS § 34-194) and the LLC's organic rules for merger approval.

For a domestic merging business corporation, the plan must be approved in accordance with any requirements in its organic law and rules for approval of a merger requiring approval by a vote of the corporation's interest holders.

If the entity's organic law and rules do not provide for approval of a merger requiring approval by the interest holders' vote, the plan must be approved by all of the entity's interest holders entitled to vote on or consent to any matter.

Interest Exchange

The plan must be approved by a domestic acquired entity, as follows:

1. in accordance with the requirements, if any, in its organic law and organic rules for approval of an exchange of interests;
2. if the organic law and rules do not provide for approval of an exchange of interests, then in accordance with the requirements, if any, in its organic law and rules for merger approval, as if the interest exchange were a merger; or
3. if the organic law and rules do not provide for approval of an exchange of interests or a merger, by all of the entity's interest holders entitled to vote on or consent to any matter.

The act specifies that, except as otherwise provided in its organic law or rules, an acquiring entity's interest holders do not have to approve the transaction.

Conversion

The plan must be approved by a domestic converting entity, as follows:

1. in accordance with the requirements, if any, in its organic rules for approval of a conversion;
2. if the organic rules do not provide for approval of a conversion, then in accordance with the requirements, if any, in its organic law and rules for approval of (a) for all entities other than a business corporation, a merger, as if the conversion were a merger or (b) for corporations, a merger requiring approval by a vote of the corporation's interest holders, as if the conversion were such a merger; or
3. if the organic law and rules do not provide for approval of a conversion or a merger as specified above, by all of the entity's interest holders entitled to vote on or consent to any matter.

Domestication

The plan must be approved by a domestic domesticating entity, as follows:

1. in accordance with the requirements, if any, in its organic rules for approval of a domestication;
2. if the organic rules do not provide for approval of a domestication, then in accordance with the requirements, if any, in its organic law and rules for approval of (a) for all entities other than a business corporation, a merger, as if the domestication were a merger or (b) for business corporations, a

- merger requiring approval by a vote of the corporation's interest holders, as if the domestication were such a merger; or
3. if the organic law and rules do not provide for approval of a domestication or a merger requiring approval by the interest holders' vote, by all of the entity's interest holders entitled to vote on or consent to any matter.

Foreign Entity Approval

Under the act, a transaction involving a foreign merging, acquired, converting, or domesticating entity is not effective unless it is approved by that entity in accordance with the law where it is organized. For a conversion, the act provides that alternatively, the transaction can be approved by the foreign entity in accordance with its organic rules.

§§ 13, 19, 25, 31 — PLAN AMENDMENT

The act outlines procedures for amending the plans of a domestic merging, acquired, converting, or domesticating entity. For all transaction categories, a plan may be amended in the same manner as it was approved, as long as the plan does not specify a different manner of amendment.

Alternatively, the plan may be amended by the entity's governors or interest holders in the manner provided in the plan. However, interest holders entitled to vote on or consent to approval of the transaction are entitled to vote on or consent to amendments that change:

1. the amount or kind of interests, securities, obligations, rights to acquire interests or securities, cash, other property, or any combination of these, to be received by the interest holders of any party to a merger or the acquired, converting, or domesticating entity;
2. the surviving, acquired, converted, or domesticated entity's public organic document or private organic rules that will be in effect immediately after the transaction takes effect, except for changes that do not require approval of that entity's interest holders under its organic law or rules; or
3. other plan terms or conditions, if the change would adversely affect the interest holder in a material respect.

§§ 13, 19, 25, 31 — PLAN ABANDONMENT

After a domestic merging, acquired, converting, or domesticating entity, as applicable, approves a plan, and before a transaction filing document (such as a certificate of merger) becomes effective, the plan may be abandoned (1) as provided in the plan or (2) in the same manner as it was approved, unless the plan prohibits it.

The act specifies procedures for a plan to be abandoned after a transaction filing document has been filed with the secretary of the state but before the filing takes effect. If this happens, a statement of abandonment (for mergers or domestications) or certificate of abandonment (for interest exchanges or conversions) must be filed with the secretary of the state before the transaction filing document takes effect. The statement or certificate of abandonment takes

effect upon its filing.

The statement or certificate of abandonment must be signed on the entity's behalf and contain:

1. the entity's name (for mergers, the name of each merging or surviving entity that is a domestic or qualified foreign entity),
2. the transaction filing document filing date, and
3. a statement that the transaction has been abandoned in accordance with the act's requirements.

A qualified foreign entity is a foreign entity that is authorized to transact business in Connecticut pursuant to a filing with the secretary of the state.

§§ 14, 20, 26, 32 — TRANSACTION FILING DOCUMENTS

For each transaction category, the act requires a document to be filed with the secretary of the state. The documents are referred to as a certificate of merger (the act also refers to a statement of merger), certificate of interest exchange, certificate of conversion, or statement of domestication, as applicable. The documents take effect on the date and time of filing or when specified in the document. They must be signed on behalf of each merging entity or a domestic acquired, converting, or domesticating entity, as applicable.

Transaction filing documents must contain the following information. They may also contain any other lawful provision.

Effective Date

If the transaction filing document is not to be effective upon filing, the document must specify when it takes effect, which except for conversions, must be no later than 90 days after the filing date.

Identifying Information

The filing document must contain:

1. for a merger: the name, jurisdiction of organization, and type of (a) the surviving entity and (b) each merging entity that is not the survivor;
2. for an interest exchange: the acquired entity's name and type and the acquiring entity's name, jurisdiction of organization, and type;
3. for a conversion: both the converting and converted entity's name, jurisdiction of organization, and type; and
4. for a domestication: the domesticating entity's name, jurisdiction of organization, and type, and the domesticated entity's name and jurisdiction of organization.

Statements of Approval

The filing document must contain:

1. for a merger: a statement that the merger was approved by (a) each domestic merging entity, if any, according to the act's requirements and (b) each foreign merging entity, if any, according to the law of its jurisdiction of organization;

2. for an interest exchange: a statement that the plan of interest exchange was approved by the acquired entity, in accordance with the act's requirements;
3. for a conversion: if the converting entity is domestic, a statement that the conversion plan was approved according to the act's requirements; or if the converting entity is foreign, a statement that the conversion was approved by it according to the law of its jurisdiction of organization; and
4. for a domestication: if the domesticating entity is domestic, a statement that the domestication plan was approved according to the act's requirements; or if it is foreign, a statement that the domestication was approved in accordance with the law of its jurisdiction of organization.

Public Organic Documents

The filing document must contain:

1. for a merger: if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic document approved as part of the merger plan; if the surviving entity is created by the merger and is a domestic filing entity, its public organic document, attached to the certificate (a domestic LLP created by the merger must attach its certificate of limited liability partnership);
2. for an interest exchange: any amendments to the acquired entity's public organic document approved as part of the plan of interest exchange;
3. for a conversion: if the converted entity is a domestic filing entity, the text of its public organic document, as an attachment; if it is a domestic limited liability partnership, the text of its LLP certificate, as an attachment; and
4. for a domestication: if the domesticated entity is a domestic filing entity, its public organic document, as an attachment; if it is a domestic LLP, its LLP certificate, as an attachment.

If the surviving entity of a merger, or the converted or domesticated entity, as applicable, is domestic, its public organic document, if any, must satisfy the requirements of Connecticut law, except it (1) need not be signed and (2) may omit any provisions that are not required to be included in a restatement of the public organic document.

Address for Service of Process

If the surviving entity of a merger, converted entity, or domesticated entity is a foreign entity that is not a qualified foreign entity, the filing document must contain a mailing address to which the secretary of the state may send any process served on the secretary pursuant to the act's requirements for the collection and enforcement of liabilities.

§§ 15, 21, 27, 33 — RESULT OF TRANSACTIONS TAKING EFFECT

The act specifies several results that follow when transactions the act authorizes take effect. While there is considerable overlap among the four transaction categories, there are also differences between each category.

Entities' Existence, Conversion of Interests, Property, Powers, Liabilities, etc.

After a transaction takes effect:

Merger. The surviving entity continues to exist or comes into existence, and each merging entity that is not the surviving entity ceases to exist. The interests in each merging entity that are to be converted in the merger are converted.

Each merging entity's property vests in the surviving entity without assignment, reversion, or impairment, and each merging entity's liabilities become liabilities of the survivor.

If the surviving entity exists before the merger, its property continues to be vested in it without reversion or impairment, and it retain its rights, privileges, immunities, powers, and purposes. It also remains subject to its liabilities.

Except as provided by other law or the merger plan, each merging entity's rights, privileges, immunities, powers, and purposes vest in the surviving entity.

Interest Exchange. The acquired entity's interests that are the subject of the exchange cease to exist or are converted or exchanged. The acquiring entity becomes the interest holder of the interests in the acquired entity stated in the plan.

Conversion. After a conversion, the converting entity's interests are converted, and the converted entity is organized under and subject to its organic law. The converted entity is the same entity as the converting entity without interruption. A conversion does not require the entity to wind up its affairs and does not constitute or cause the entity's dissolution.

The converting entity's property continues to be vested in the converted entity without assignment, reversion, or impairment. The converting entity's liabilities continue as liabilities of the converted entity. Except as provided by other law or the conversion plan, the converting entity's rights, privileges, immunities, powers, and purposes remain in the converted entity.

Domestication. The act's provisions are similar to those for conversions. It specifies that the interests in the domesticating entity are converted to the extent and in the manner approved in connection with the domestication.

Interest Holder and Other Rights

After a transaction takes effect, the merging, acquired, converting, or domesticating entity's interest holders are entitled only to the rights provided to them under the plan and to any appraisal rights they have under the act (see below) and the entity's organic law.

Under the act, except as otherwise provided in the merging, acquired, converting, or domesticating entity's organic law or rules, the transaction does not give rise to any rights that an interest holder, governor, or third party would otherwise have upon the entity's dissolution, liquidation, or winding-up.

Interest Holder Liability That Arises Due to Transaction

Under the act, when a transaction takes effect, a person that did not have interest holder liability with respect to a merging, acquired, converting, or domesticating entity, as applicable, and that becomes subject to such liability with

respect to a domestic entity as a result of the transaction, has such liability only to the extent provided by the entity's organic law and only for those liabilities that arise after the transaction becomes effective.

Substitution in Pending Actions

When a merger becomes effective, the surviving entity's name may be substituted for that of any merging entity that is a party to a pending action or proceeding. The act has similar provisions regarding conversions and domestications.

Public Organic Documents

Merger. If the surviving entity exists before the merger, its public organic document, if any, must be amended as provided in the statement of merger and is binding on its interest holders. If the surviving entity is created by the merger, any public organic document is effective and binding on its interest holders.

Interest Exchange. The act's provisions regarding public organic documents for acquired entities are similar to those for surviving entities that existed before the merger, as specified above.

Conversion or Domestication. If the converted or domesticated entity is a filing entity, its public organic document is effective and binding on its interest holders. If it is an LLP, its LLP certificate is effective simultaneously.

Private Organic Rules

Merger. If the surviving entity exists before the merger, any private organic rules that are to be in a record must be amended as provided in the merger plan and are binding on and enforceable by (1) its interest holders and (2) for surviving entities that are not business corporations, any other party to an agreement that is part of the surviving entity's private organic rules.

If the surviving entity is created by the merger, its private organic rules are effective and binding on and enforceable by (1) its interest holders and (2) for surviving entities that are not business corporations, any other party to an agreement that was part of the organic rules of a merging entity if that person has agreed to be a party to an agreement that is part of the surviving entity's private organic rules.

Interest Exchange. The act's provisions regarding private organic rules for acquired entities are similar to those for surviving entities that existed before a merger, as specified above.

Conversion or Domestication. The converted or domesticated entity's private organic rules that are to be in a record, if any, approved as part of the plan are effective and binding on and enforceable by (1) its interest holders and (2) for an entity that is not a business corporation (or for conversions, not a nonprofit corporation), any other party to an agreement that is part of the entity's private organic rules.

Liability of Former Interest Holder

Under the act, when a merger becomes effective, the interest holder liability of a person that no longer holds an interest in a domestic merging entity with respect to which the person had such liability is as follows:

1. the merger does not discharge any interest holder liability under the domestic merging entity's organic law to the extent it arose before the merger became effective;
2. the person does not have interest holder liability under the domestic merging entity's organic law for any liability arising after the merger becomes effective;
3. the domestic merging entity's organic law continues to apply to the release, collection, or discharge of any interest holder liability preserved under (1) above as if the merger had not occurred and the surviving entity were the domestic merging entity; and
4. the person has whatever contribution rights from any other person as provided by the domestic merging entity's organic law or rules with respect to any interest holder liability preserved under (1) above as if the merger had not occurred.

The act has similar provisions regarding interest holder liability for acquired, converting, or domesticating entities, as applicable.

Foreign Entities and Service of Process

When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in Connecticut for the collection and enforcement of any liabilities of a domestic merging entity. The entity must appoint the secretary of the state as its agent for service of process for collecting or enforcing such liabilities. The act has similar provisions for converted and domesticated entities.

After a merger takes effect, the certificate of authority or other foreign qualification of any foreign merging entity that is not the surviving entity is canceled.

For conversions or domestications, if the converting or domesticating entity, as applicable, is a qualified foreign entity, its certificate of authority or other foreign qualification is canceled when the transaction becomes effective.

Comparison to Prior or Existing Law

In general, the above provisions are similar to those in existing or prior law for similar transactions, but in some cases the act's requirements are more detailed. For example, existing law on the effect of a business corporation's share exchange does not address some of these topics, but does include similar provisions regarding (1) the rights of former shareholders and (2) the non-release of liabilities that arose prior to the share exchange (CGS § 33-820).

For another example, the act's provisions on the results of a conversion taking effect are much more detailed than prior law for the effect of a partnership converting into a limited partnership, or vice versa. Under that repealed law, the new entity was for all purposes the same entity as it was before the conversion. When the conversion took effect:

1. all property owned by the converting entity remained vested in the

- converted entity;
- 2. all of the converting entity's obligations continued as obligations of the converted entity; and
- 3. a pending action or proceeding against the converting entity could be continued as if the conversion had not occurred.

§§ 34-58 — REPEAL OF EXISTING PROVISIONS

The act generally deletes provisions in prior law for mergers, conversions, and interest exchanges involving more than one entity type (prior law did not generally provide for domestications), and makes related minor and conforming changes. The deleted provisions include the following:

- 1. mergers or interest exchanges of domestic business corporations with partnerships, limited partnerships, LLPs, LLCs, joint ventures, joint stock companies, business trusts, statutory trusts, real estate investment trusts, or other associations or legal entities (other than corporations) organized to conduct business (§§ 35-40);
- 2. mergers of domestic limited partnerships with corporations, general partnerships, LLPs, LLCs, joint ventures, joint stock companies, business trusts, statutory trusts, real estate investment trusts, or other associations or legal entities (other than limited partnerships) organized to conduct business (§§ 41-44);
- 3. conversion of a professional association into a professional service corporation (see below for additional changes regarding professional service corporations) (§§ 45, 54);
- 4. mergers of LLCs with corporations, general partnerships, LLPs, limited partnerships, joint ventures, joint stock companies, business trusts, statutory trusts, real estate investment trusts, or other associations or legal entities (other than LLCs) organized to conduct business (§§ 46-49) (see below for additional changes regarding LLCs organized to render professional services);
- 5. mergers of partnerships with corporations, limited partnerships, LLPs, LLCs, joint ventures, joint stock companies, business trusts, statutory trusts, real estate investment trusts, or other associations or legal entities (other than partnerships) organized to conduct business (§§ 50-52);
- 6. conversion of a domestic general or limited partnership into an LLC (§ 58); and
- 7. conversion of a partnership into a limited partnership, or vice versa (§ 58).

§ 34 — *Professional Service Corporations*

The act makes additional changes regarding professional service corporations. Prior law provided that a professional service corporation could consolidate or merge only with another professional service corporation, LLC, partnership, LLP, or medical foundation, and only if the other entity was organized to render the same specific professional service. The act deletes this restriction on the entities with which a professional service corporation may consolidate or merge, but

retains the requirement that the entities be organized to render the same professional service if the consolidation or merger is with another professional service corporation.

Prior law also prohibited the merger or consolidation of a professional service corporation with various foreign entities, including foreign corporations, LLCs, partnerships, or LLPs. The act retains this prohibition only regarding foreign corporations.

§ 46 — Limited Liability Companies Organized To Render Professional Services

Prior law provided that an LLC organized to render professional services could merge or consolidate only with another domestic LLC, professional service corporation, partnership, or LLP, and only if the other entity was organized to render the same professional service. Under the act, an LLC organized to render professional services may merge or consolidate only with another domestic LLC. The act eliminates the restriction that the merger or consolidation is permitted only if the other entity is organized to render the same professional service.

The act retains the prohibition in existing law prohibiting an LLC organized to render professional services from merging or consolidating with a foreign entity of any type.

§ 53 — Transfer Act

The act repeals a provision exempting from the Transfer Act conversions of a general or limited partnership to an LLC. The Transfer Act regulates conveyances of businesses that handle hazardous waste.

GENERAL PROVISIONS

§ 2 — Other Law

The act specifies that principles of law and equity supplement it, unless particular provisions of the act displace them. It also specifies that it does not authorize any illegal action or affect the application or requirements of law.

Transactions under the act do not create or impair rights or obligations on the part of anyone under a provision of Connecticut law relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic merging, acquired, converting, or domesticating corporation unless either of the following occur: (1) the transaction satisfies the requirements of such provisions, provided the corporation does not survive the transaction or (2) the plan approval is by a sufficient vote of shareholders or directors to create or impair the right or obligation directly under the provision, provided the corporation survives the transaction.

§ 3 — Government Notification or Approval

Under the act, if an entity needs to notify or obtain the approval of a governmental agency or officer to be a party to a merger, it must provide such notice or obtain such approval to be a party to an interest exchange, conversion, or

domestication. The requirement applies to both domestic and foreign entities.

§ 3 — Charitable Property

If an entity holds property for a charitable purpose under Connecticut law immediately before a transaction under the act takes effect, the act provides that generally, the transaction does not divert that property from the objects for which it was donated, granted, or devised. However, this does not apply if the entity obtains an appropriate order of the attorney general specifying how the property is to be disposed, to the extent required by or pursuant to Connecticut law concerning cy pres (see BACKGROUND) or other law concerning nondiversion of charitable assets.

The act specifies that these rules apply to both domestic and foreign entities.

§ 4 — Public Organic Document

Under the act, a filing that is signed by a domestic entity becomes part of the entity's public organic document, as long as the entity's organic law provides that similar filings under such law become part of its public organic document.

§ 5 — Other Manner of Accomplishing Results

The fact that a transaction under the act produces a certain result does not preclude the same result from being accomplished in another lawful manner.

§ 6 — Facts Outside of Plan

Under the act, plans of merger, interest exchange, conversion, or domestication may refer to facts ascertainable outside of the plan, as long as the plan specifies the manner in which the facts operate on the plan. The facts may include an event's occurrence or a person's determination or action, whether or not a party to the transaction controls the event, determination, or action.

§ 7 — Transaction Approval

The act provides that, except as otherwise provided by a domestic entity's organic law or rules, the unanimous vote or consent of an entity's interest holders approving a transaction under the act satisfies the act's requirements for transaction approval.

§ 8 — Appraisal Rights

Similar to existing law regarding corporate mergers and interest exchanges, the act specifies when interested parties are entitled to appraisal rights. The act's appraisal rights provisions apply to transactions governed by the act, while existing law's appraisal rights provisions continue to apply to other transactions governed by existing law (for example, a merger of two corporations).

Under the act, an interest holder of a domestic merging, acquired, converting, or domesticating corporation is entitled to appraisal rights in connection with the transaction, as long as the interest holder would have been so entitled under the entity's organic law in connection with a merger in which the interest holder's

interests were changed, converted, or exchanged. However, this does not apply if the entity's (1) organic law allows the organic rules to limit the availability of appraisal rights and (2) the organic rules provide a limit.

An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under the act, to the extent provided (1) in the entity's organic rules; (2) in the plan; or (3) for a business corporation, by action of its governors. If an interest holder is entitled to contractual appraisal rights and the entity's organic law does not provide procedures for conducting an appraisal rights proceeding, the law's procedures for appraisal rights in business corporations apply, to the extent practicable or as otherwise provided in the entity's organic rules or the plan.

§§ 16, 22, 28 — *Protected Agreements*

Under the act, a protected agreement is:

1. a record evidencing indebtedness and any related agreement in effect on or after October 1, 2011 (although the act is not effective until January 1, 2014);
2. an agreement binding on an entity, or on any of an entity's governors or interest holders, on or after that date; or
3. an entity's organic rules in effect on or after October 1, 2011.

If a protected agreement contains a provision that applies to a domestic entity's merger but does not refer to an interest exchange, conversion, or domestication, the provision applies to such a transaction as if it were a merger until such time after October 1, 2011, as the provision is amended. For interest exchanges, the act specifies that this only applies when the domestic entity is the acquired entity.

§ 1 — OTHER DEFINITIONS

In addition to terms defined above, the following definitions apply in the act:

Governance Interest: The right under an entity's organic law or organic rules, other than as a governor, agent, assignee, or proxy, to (1) receive or demand access to the entity's books or records or information concerning the entity; (2) vote for the election of the entity's governors; or (3) receive notice of or vote on any or all issues involving the entity's internal affairs.

Jurisdiction of Organization (of an Entity): The jurisdiction under which the law includes the entity's organic law.

Liability: A debt, obligation, or any other liability arising in any manner, regardless of whether it is secured or contingent.

Person: An individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

Sign or Signature: Includes any manual, facsimile, conformed, or electronic signature.

OLR PUBLIC ACT SUMMARY

Transferable Interest: The right under an entity's organic law to receive distributions from the entity.

Type: With regard to an entity, this means a generic entity form (1) recognized at common law or (2) organized under an organic law, whether or not an entity organized under such law is subject to the provisions of that law creating different categories of the entity form.

BACKGROUND

Model Entity Transactions Act (META)

META was drafted by the National Conference of Commissioners on Uniform State Laws and the American Bar Association. It was created in 2005 and amended in 2007.

Cy Pres

The cy pres doctrine allows a court to amend the terms of a charitable trust as closely as possible to the original intention of the deceased when the original objective becomes impossible, impracticable, or illegal to perform.

OLR Tracking: JO:KM:PF:ts